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CRIMINAL LAW — TRIAL — RIGHT OF ACCUSED TO ACT AS HIS OWN COUNSEL. — The defendant was tried on a charge of criminal conspiracy. After the evidence was all in, he discharged his attorneys and requested permission to make the closing argument. The court denied the request, and the case went to the jury without argument for the defendant. *Held*, that there was no error. *State* v. *Townley*, 182 N. W. 773 (Minn.).

A person *sui juris* charged with crime may try his own case. *Dietz* v. *State*, 149 Wis. 462, 136 N. W. 166; *Reg.* v. *Southey*, 4 F. & F. 864; *Reg.* v. *Yscuado*, 6 Cox C. C. 386. The danger of his making unsworn statements of fact to the jury is not important enough to deny him this right. This danger cannot be greater when he makes only the closing argument, and therefore cannot be a sound basis on which to rest the principal case. But the question remains how far a defendant waives his right by retaining counsel. Originally, in cases where a defendant was allowed counsel as to matters of fact and of law, if counsel conducted the trial as to matters of fact the accused had no right to make the closing argument. *Rex* v. *Parkins*, 1 C. & P. 548. This was simply a matter of the orderly conduct of the trial. *Rex* v. *White*, 3 Campb. 98. For the accused might be coached by counsel in examining witnesses, and then address the jury himself. See *Rex* v. *Parkins*, *supra*, at 549. The English courts have been increasingly lenient, and have even allowed both accused and counsel to address the jury. *Rex* v. *Pope*, 18 T. L. R. 717; *Reg.* v. *Doherty*, 16 Cox C. C. 306; *Reg.* v. *Walkling*, 8 C. & P. 243; *Reg.* v. *Malings*, 8 C. & P. 242. *Cf. Reg.* v. *Millhouse*, 15 Cox C. C. 622. But see *Reg.* v. *Taylor*, 1 F. & F. 535; *Reg.* v. *Rider*, 8 C. & P. 539; *Reg.* v. *Boucher*, 8 C. & P. 141; *Queen* v. *Burrows*, 2 M. & Rob. 124. No technical rules should determine the right of a defendant to discharge his counsel and continue the case in person. The principal case rightly holds it a matter of discretion. But it may be advisable to allow persons accused of political offenses, as was the defendant here, a greater scope than others. See Robert Ferrari, "Political Crime and Criminal Evidence," 3 MINN. L. REV. 365; "The Trial of Political Criminals, Here and Abroad," 66 DIAL, 647.

EMINENT DOMAIN — VALUATION — WHAT IS ADMISSIBLE EVIDENCE OF VALUE. — A verdict, in condemnation proceedings by the United States against the Cape Cod Canal, was based, *inter alia*, upon the following evidence, introduced by the owners over the government's exceptions: (1) utility to the government for military or naval purposes; (2) cost of reproduction in 1919 (three to four times the actual cost about five years earlier), introduced without any evidence that there was a market at the enhanced price; (3) opinion of an expert as to the prospective earning capacity of the property during the next twenty to twenty-five years; (4) as elements of actual cost: interest on bonds, payment in stock and bonds, payments to bankers for aid in floating the bonds, payments for services in financing the company and interest on the cost of the plant after its completion. *Held*, that the exceptions be sustained and a new trial granted. *United States* v. *Boston, Cape Cod and New York Canal Co.*, 271 Fed. 877 (1st Circ.).

For a discussion of the principles involved in this case, see NOTES, *supra*, page 76.

FIXTURES — REMOVAL — EFFECT OF AGREEMENT ON CHARACTER OF PROPERTY. — The defendant leased lands to the plaintiff who covenanted that he would erect thereon certain buildings, and would remove them at the expiration of his lease or within three months thereafter. There was no express provision in the lease respecting the ownership of the buildings. The plaintiff failed to remove the buildings within the specified time, and the

defendant refuses to let him go on the land to take the buildings. The plaintiff sues for damages for detinue or conversion. *Held*, that the plaintiff recover. *Cooney* v. *Millar*, [1921] V. L. R. 254.

It has frequently been held that by agreement made between the owners of realty and personalty before annexation, fixtures remain personal property and may be removed. *Broaddus* v. *Smith*, 121 Ala. 335, 26 So. 34; *Dame* v. *Dame*, 38 N. H. 429. See EWELL, FIXTURES, 2 ed., 66–68, 150. Another view is that the fixtures become realty, but the original owner has a right of severance. *Trask* v. *Little*, 182 Mass. 8, 64 N. E. 206. Since by annexation the chattels assume the appearance of realty, and would, in the absence of a contract, be realty, the second view seems preferable. There is all the more reason for reaching this result in the principal case because there was no express provision that the buildings should be personalty. If there was simply a right of severance, there is no reason to extend it beyond the time bargained for. *Smith* v. *Park*, 31 Minn. 70, 16 N. W. 490. Even if it be said that the fixtures did become personalty by force of an implied contract, they should remain personalty only so long as the contract is operative. *Hughes* v. *Kershow*, 42 Colo. 210, 93 Pac. 1116. See *contra*, *Dame* v. *Dame*, *supra*. On either view, the principal case is wrong.

FOREIGN CORPORATIONS — SERVICE OF PROCESS — JURISDICTION WHEN CORPORATION IS NOT "DOING BUSINESS" IN THE STATE. —The defendant, a foreign corporation, had no place of business in New York, and owned no property in the state. It sent its treasurer into the state on several occasions to buy furniture. The treasurer had full power to contract for the defendant. On one of these trips he was served, as agent of the defendant, with a summons for an action growing out of one of the prior purchases. The service was made as provided for by statute. (1909 N. Y. CODE CIV. PRO., § 432.) The defendant moved to quash the service. *Held*, that the motion be denied. *National Furniture Co.* v. *William Spiegelman & Co.*, 189 N. Y. Supp. 449 (Sup. Ct.).

Under the statute involved here the New York courts for a long time held that whenever an officer of a foreign corporation was personally served within the state, the courts acquired jurisdiction over the corporation for all causes of action. *Sadler* v. *Boston & Bolivia Rubber Co.*, 140 App. Div. 367, 125 N. Y. Supp. 405, aff'd 202 N. Y. 547, 95 N. E. 1139. But it is now recognized that a judgment *in personam* can only be rendered against a foreign corporation when it is "doing business" within the state. See *Riverside, etc. Mills* v. *Menefee*, 237 U. S. 189; *Dollar Co.* v. *Canadian C. & F. Co.*, 220 N. Y. 270, 115 N. E. 711; *Pennoyer* v. *Neff*, 95 U. S. 714. This defendant was not "doing business" within the state. *Good Hope Co.* v. *Railway Barb Fencing Co.*, 22 Fed. 635 (S. D. N. Y.); *St. Louis Wire-Mill Co.* v. *Consolidated Barb-Wire Co.*, 32 Fed. 802 (E. D. Mo.). To say, as the court does, that the defendant, for the purposes of this action, was present "doing business," is only to confuse the issue. New phraseology cannot hide the inherent defects of the old doctrine. That doctrine not only denies due process of law, but also conflicts with every accepted theory of jurisdiction. See Austin W. Scott, "Jurisdiction over Nonresidents Doing Business within a State," 32 HARV. L. REV. 871. If it is attempted to support the case on some theory of regulation of transactions carried on in the state, such reasoning would equally apply to nonresident individuals. It is not applied to individuals when they are "doing business," and *a fortiori* would not apply where they are not "doing business." *Flexner* v. *Farson*, 248 U. S. 289; *Cabanne* v. *Graf*, 87 Minn. 510, 92 N. W. 461. Unfortunately New York is not the only jurisdiction which gives way to the tendency to make things